

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Barbara Moran

Date of Filing: May 17, 2005

Case Number: TFA-0102

On May 17, 2005, Barbara Moran filed an Appeal from a determination issued to her on April 26, 2005, by the Director of the Headquarters Freedom of Information Act/Privacy Act Group (FOIA/PA) of the Department of Energy's Office of the Executive Secretariat. This determination responded to a request for documents that Ms. Moran submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require the DOE to perform an additional search for responsive material.

I. Background

Ms. Moran inquired with various offices of the Navy about documents concerning a 1966 aircraft salvage operation that the United States Navy conducted in the Mediterranean Sea. Ultimately, she was advised to request the documents from the DOE: "[Personnel at the Navy] said that because the operation involved a nuclear weapon, the documents fall under the jurisdiction of the DOE." Appeal at 1. Ms. Moran then filed a FOIA request with FOIA/PA for three documents, identified by title, description and date, that the Navy's Office of Naval Operations had published in 1967. FOIA/PA determined that the History Division in the Office of the Executive Secretariat was the only reasonable location that might possess the requested documents, and referred the request to that office. The History Division performed a search for the documents and determined that it did not possess them. In her Appeal, Ms. Moran challenges the adequacy of the search, on the grounds that the Navy has stated that the documents do exist.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to

uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search was in fact inadequate. *See, e.g., Jo Ann Estevez*, 28 DOE ¶ 80,309 (2003).

FOIA/PA informed me that the DOE repository for documents dating from the 1960s is the History Division. *See* Memorandum of Telephone Conversation between Sheila Jeter, FOIA/PA, and William Schwartz, Office of Hearings and Appeals (May 19, 2005). Ms. Jeter knew of no other logical location to search for documents from that era. *Id.* The History Division also informed me that it was in all likelihood the only office in the DOE that might have the requested documents. *See* Memorandum of Telephone Conversation between Terrence Fehner, History Division, and William Schwartz, OHA (May 19, 2005). Mr. Fehner explained to me that the search he conducted in response to this request consisted of looking in the History Division’s subject files that bore headings related to the facts surrounding the salvage operation. He was not surprised that his search was unsuccessful because the History Division generally does not maintain copies of published materials, and rarely maintains copies of materials published outside of the DOE or its predecessors. *Id.* After reviewing the record in this case, we find that FOIA/PA conducted a search that was reasonably calculated to uncover the requested information.* Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Barbara Moran on May 17, 2005, OHA Case Number TFA-0102, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: June 1, 2005

* In a telephone conversation with this Office, Ms. Moran asked whether the documents she seeks might be maintained at the DOE’s Los Alamos or Sandia facilities, because, she stated, those facilities were involved with the salvage operation. We have spoken with the Alternative FOIA Officer responsible for FOIA requests at those locations. She informed us that neither location has copies of any of the three documents Ms. Moran seeks. Memorandum of Telephone Conversation between Ms. Terry Apodaca, Alternate FOIA Officer, NNSA Albuquerque Service Center, and William Schwartz (May 23, 2005).